

**A RESOLUTION BY
CITY UTILITIES COMMITTEE**

05-*R*-0204

A RESOLUTION AUTHORIZING THE MAYOR OR DESIGNEE TO ENTER INTO AN APPROPRIATE CONTRACTUAL AGREEMENT WITH _____ FOR FC-3004007825, CUSTER AVENUE CSO STORAGE AND DECHLORINATION FACILITY AGREEMENT ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT IN AN AMOUNT NOT TO EXCEED _____ DOLLARS (\$00,000,000.00). ALL CONTRACTED WORK FOR THE BASE YEAR IN THE AMOUNT OF _____ DOLLARS (\$00,000,000.00) SHALL BE CHARGED TO AND PAID FROM FUND ACCOUNT AND CENTER NUMBER: _____ AND THE SECOND AND FINAL YEAR SHALL BE CHARGED TO AND PAID FOR FROM VARIOUS FUND ACCOUNT AND CENTER NUMBER(S).

WHEREAS, the City of Atlanta ("City") did advertise FC-3004007825, Custer Avenue CSO Storage and Dechlorination Facility Agreement on behalf of the Department of Watershed Management; and

WHEREAS, the Commissioner of the Department of Watershed Management and the Chief Procurement Officer have recommended that the FC-3004007825, Custer Avenue CSO Storage and Dechlorination Facility Agreement be awarded to _____; and

WHEREAS, the Department of Watershed Management will satisfy the financial obligation of, FC-3004007825, Custer Avenue CSO Storage and Dechlorination Facility using "phased funding"; and

WHEREAS, the funding phases for the initial and subsequent years are to be appropriated as follows:

Base Year	40%
Second Year	50%
Third Year	Balance; and

WHEREAS, Department of Watershed Management did appropriate funds for the base year in the amount of _____ Dollars (\$00,000,000.00).

THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, that the Mayor be and is hereby authorized to enter into agreement with _____ for FC-3004007825, Custer Avenue CSO Storage and Dechlorination Facility Agreement based on unit prices in the amount not to exceed a total amount of _____ Dollars (\$00,000,000.00) to be funded in phases.

BE IT FURTHER RESOLVED, that the Chief Procurement Officer is hereby directed to prepare an appropriate Agreement for execution by the Mayor to be approved by the City Attorney as to form.

BE IT FURTHER RESOLVED, that the term of the Agreement shall be for a period of seven hundred thirty (730) calendar days for substantial completion and eight hundred twenty (820) calendar days for full completion at the sole discretion of the City.

BE IT FURTHER RESOLVED, that this Agreement shall not become binding on the City, and the City shall incur no liability upon same until such Agreement has been executed by the Mayor and delivered to the contracting party.

BE IT FINALLY RESOLVED, that all services for said contracted work for the base year of the Agreement in the amount of _____ Dollars (\$00,000,000.00) shall be charged to and paid from fund account and center number: _____ and the second and final year shall be charged to and paid for from various fund and account number(s).

LP (01/14/05)

LEGISLATIVE SUMMARY

TO: CITIES UTILITIES COMMITTEE

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR OR DESIGNEE TO ENTER INTO AN APPROPRIATE CONTRACTUAL AGREEMENT WITH _____ FOR FC-3004007825, CUSTER AVENUE CSO STORAGE AND DECHLORINATION FACILITY AGREEMENT ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT IN AN AMOUNT NOT TO EXCEED _____ DOLLARS (\$00,000,000.00). ALL CONTRACTED WORK FOR THE BASE YEAR IN THE AMOUNT OF _____ DOLLARS (\$00,000,000.00) SHALL BE CHARGED TO AND PAID FROM FUND ACCOUNT AND CENTER NUMBER: _____ AND THE SECOND AND FINAL YEAR SHALL BE CHARGED TO AND PAID FOR FROM VARIOUS FUND ACCOUNT AND CENTER NUMBER(S).

Committee Meeting Date: February 1, 2005

Council Meeting Date: February 7, 2005

Legislation Title: FC-3004007825, Custer Avenue CSO Storage and Dechlorination Facility Agreement

Requesting Dept.: Department of Watershed Management ("DWM")

Invitations Mailed: Three (3) Pre-Qualified Bidders under Request for Qualification, FC-3004007813:
W. L. Hailey & Company, Inc.;
GCS Atlanta; and
Gunther-Nash, Inc.

Source Selection: Sealed Bids

Bid Opening: January 31, 2005

Bidders: W. L. Hailey & Company, Inc.; \$ _____
GCS Atlanta; and _____
Gunther-Nash, Inc. _____

Contract Value: Unit prices in an amount not to exceed phased funded periods over the duration of the project (see attached "Draft Bid Agreement", sections 9 and 10, pages 8– 10).

Background: This is a Consent Decree project scheduled for completion by November 7, 2007. The scope of work for this project is to construct a ten (10) million gallon capacity underground storage facility at a depth of eighty to one hundred fifty (80 – 150) feet, screening and dechlorination facility for the Department of Watershed Management.

Evaluation Team: Representatives from the Department of Watershed Management and the Office of Contract Compliance.

Term of Contract: Seven Hundred Thirty (730) calendar days for substantial completion; and Eight Hundred Twenty (820) calendar days for final completion.

Fund Account Centers: All services for said contracted work for the base year of the Agreement in the amount of _____Dollars (\$00,000,000.00) shall be charged to and paid from fund account and center number: _____ and the second and final year shall be charged to and paid for from various fund and account number(s).

Prepared By: Lynn Thomas Portee, Contracting Officer (404) 330-6109

DRAFT BID DOCUMENT

FC- 3004007825,

**CUSTER AVENUE STORAGE AND
DECHLORINATION FACILITY**

- d). Cancellation of the eligible project.

9.

The City agrees to pay Contractor for the Work performed pursuant to this Agreement on a phased funded basis for an amount not to exceed that amount stated in the Bid Schedule, hereinafter attached as Exhibit A _____ Dollars.

This project will be funded in phases over the duration of the project. The initial and each subsequent funding period shall not exceed twelve (12) months. The Agreement or Agreement awarded for this project will terminate immediately and absolutely at such time as the appropriated or otherwise unobligated funds are not longer available to satisfy the obligations of the City. Agreement or Agreements awarded for this project will not create a debt of the City for the payment of any sum beyond the initial funding phase after execution, or in the event of subsequent funding phases, beyond said phase.

This project will be funded in phases over the duration of the project. The initial and each subsequent funding period shall not exceed twelve (12) months. This Agreement will terminate immediately and absolutely at such time as the appropriated or otherwise unobligated funds are no longer available to satisfy the obligations of the City. This Agreement does not create a debt of the City for the payment of any sum beyond the initial funding phase after execution, or in the event of subsequent funding phases, beyond said phase.

The City is obligated only to pay such compensation under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during City's then current fiscal year.

- a. This Agreement and any renewal thereof shall terminate absolutely and without further obligation on the part of the City at the close of the initial funding period and at the close of each succeeding phased funding term for which the Agreement may be renewed subject to the provisions of O. C. G. A., Section 36-60-13.
- b. This Agreement states the City's total obligation for the initial funding period and further states the extent of the City's obligation in each succeeding phased funding term of this Agreement, if renewed.
- c. Notwithstanding anything contained in the Agreement, the City's obligation to pay compensation provided under this Agreement and any renewal shall be subject to the City's annual appropriations of funds for the services procured under this Agreement by the City's governing body and such obligation shall not constitute a pledge of the City's full faith and credit within the meaning of any constitutional debt limitation. The City's Representative shall deliver written

notice in the event the City does not intend to budget funds for the succeeding renewal term.

- d. Notwithstanding anything contained in this Agreement, if sufficient funds have not be appropriated by the City to support continuation of this Agreement for an additional renewal term, this Agreement shall terminate absolutely and without further obligation on the City's part whatsoever. The City shall give notice of such termination in accordance with the Termination provisions of this Agreement.
- e. The amounts of the annual obligation as represented by the following percentages of the total Agreement values represent the City's estimated annual funding obligation based on the City's perception of the probable cash flow requirements for the project. If sufficient funds are available, this Agreement will be amended at the beginning of each renewal year to adjust the amount of money obligation based on the Contractor's current schedule and cash flow projections. The cash flow projections will be determined by the Engineer from an evaluation of the Contractor's periodic schedule updates, submitted in accordance with the requirements of the Special Conditions of the Agreement Documents:

<u>Contract Period</u>	<u>Total Obligation (as a percentage of Agreement Price)</u>
For the calendar year of execution	40
If renewed (the following calendar year)	50
If renewed (the second following calendar year)	Balance

10.

The terms of the Agreement shall be for a period not to exceed one (1) year and will terminate absolutely and without further obligation on the part of the City at the close of the calendar year (December 31st) in which it is executed and the close (midnight December 31st) of each succeeding calendar year for which it is renewed. The Agreement will contain two (2) annual renewable options at the sole discretion of the City. Contractor shall commence the Work within ten (10) calendar days after receipt of Notice to Proceed and shall substantially complete the Work within seven hundred thirty (730) calendar days and fully complete the Work within eight hundred twenty (820) calendar days.

11.

Contractor, by the execution of this Agreement, acknowledges that it is possessed of that degree of care, learning, skill, and ability which is ordinarily possessed by other members of its profession and further contracts that in the performance of the duties herein set forth, it will exercise such degree of care, learning, skill and ability as is ordinarily employed by

Contractor under similar conditions and like circumstances and shall perform such duties without neglect.

12.

Contractor agrees to obtain and maintain during the entire term of this Agreement all of the insurance called for in the Agreement Documents, with the City as an additional insured in each policy of public liability and property damage insurance, and shall furnish to the City a certificate of insurance showing required coverage. The cancellation of any policy of insurance required by this Agreement shall meet the requirements of notice under the laws of the State of Georgia as presently set forth in the Georgia Code.

13.

In addition to its agreement to obtain and maintain the insurance as set forth herein above, the Contractor agrees that to the fullest extent permitted by law, the Contractor shall at his sole cost and expense indemnify, defend, satisfy all judgments and hold harmless the City, the Designer, the Engineer, and their agents and employees from and against all claims, damages, actions, judgments, costs, penalties, liabilities, losses and expenses, including, but not limited to, attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, action, judgment, cost, penalty, liability, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; and (2) is caused in whole or in part by any act or omission of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in Appendix B, Insurance and Bonding Requirements, Paragraph F.

In any and all claims against the City, the Engineer or any of their agents or employees by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation in Appendix B, Insurance and Bonding Requirements, Paragraph F, shall not be limited in any way, including, but not limited by, the limits of the liability insurance required under this Agreement and the Agreement Documents, nor limited by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or Workmens' Compensation acts, disability benefit acts or other employee benefit acts.

14.

The Contractor shall obtain, at its own expense, all permits and licenses required by all municipal, state and federal authorities now in force, or which may hereafter be in force, pertaining to the performance of the work called for by this Agreement. The Agreement Documents, including this Agreement, constitute the entire and integrated Agreement between the City and the Contractor and may be amended only by written instrument